

For:

Introduction 3/2/20
Public Hearing 2/19/20
For Adoption 3/2/20

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2020-5

**AN ORDINANCE TO AMEND THE
ZONING MAP OF THE TOWN OF MOUNT AIRY
TO CORRECT A MAPPING ERROR AND
EXTEND THE BOUNDARIES OF TWO PROPERTIES
AT THE CORNER OF S. MAIN STREET (MD ROUTE 808)
AND MD ROUTE 27 TO DELETE A
STATE HIGHWAY ADMINISTRATION
RIGHT OF WAY SHOWN IN ERROR**

WHEREAS, application was made by and on behalf of the owners and prospective developer of a property within Town limits located at or near the intersection of S. Main Street (Md. Route 808) and Md. Route 27, known as the "Vosloh Property" bearing a property address of 1801 South Main Street, Mount Airy, Maryland, to rezone a portion of the Vosloh Property in part on the basis of mistake pursuant to the Land Use Article of the Maryland Code ("LU"), Section 4-204 and the Town Code, Section 112-69 (hereinafter "the Application"); and

WHEREAS, the Application was assigned case number M-REZ-2019-01 by the Town;
and

WHEREAS, the part of the Application for rezoning that was premised upon a mistake alleged that a significant portion of the Vosloh Property, and a significant portion of an adjoining property known as "the Fleming Property" bearing a property address of 1709 S. Main Street, Mt. Airy, Maryland, had been cut off or not shown on the Zoning Map of the Town of Mt. Airy (hereafter "the Town Zoning Map") due to a once proposed State Roads Commission (now known as State Highway Administration (SHA)) right of way, No. CL-409-4-771 (hereafter "SHA Right of Way"), but which was voided and never conveyed to the SHA, that had it been conveyed by the Voslohs to the SHA would have been additional right of way for the so called "Mt. Airy By-Pass" leading to what is now Interstate 70; and

WHEREAS, the Applicants further asserted that the Town's Zoning Map picked up and included this mapping error from its original source, an SHA map, which got repeated through successive Town Comprehensive or Master Plans, including in the Town Zoning Map contained in the last Town Comprehensive or Master Plan for 2013, which was adopted in 2016 ("the Town Master Plan"); and

WHEREAS, the Town Planning Commission reviewed, commented and made recommendation on the Application, and specifically whether the aforementioned mistake was contained in the Town Zoning Map; and

WHEREAS, pursuant to LU, Sections 4-203(b) and 4-204(b)(5), and the Town Code, Section 112-66A, the Town Council conducted a public hearing on the Application on February 19, 2020, after due and lawful notice, at which the Applicant put on evidence of the aforementioned mistake as a basis for rezoning the Vosloh Property, at which the owners of the Fleming Property were present and given opportunity to be heard, should they have so desired; and

WHEREAS, after the hearing and close of evidence, the Town Council found that the mistake asserted in the Application had in fact occurred, and could be a basis to rezone the portion of the Vosloh Property that the Application sought to rezone, but then the Town Council legislatively determined to keep the zoning for the entirety of the Vosloh Property, including the portion not shown on the Town's Zoning Map due to the SHA Right of Way, and including the portion of the Vosloh Property for which rezoning was sought, in the Residential Existing (RE) Zone, as had been the zoning placed on the portion of the Vosloh Property that had been shown in the Town Zoning Map; and

WHEREAS, at the aforementioned public hearing, the Town Council did vote to change the Town's Zoning Map to correct the mapping error by removing the SHA right of way mentioned above, and by extending the boundaries of the Vosloh Property line out to the Southeastern boundary of the SHA Right of Way contiguous with the intersection of S. Main Street and Route 27; and

WHEREAS, a portion of the Fleming Property (at the rear elevation) was within the area that the Town Zoning Map erroneously depicted the SHA right of way; and

WHEREAS, the Fleming Property that is depicted in the Town Zoning Map is zoned in the RE District; and

WHEREAS, the effect of removing the SHA right of way from the Town Zoning Map is to likewise depict and zone in the RE zoning district the balance of the Fleming Property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:

Section 1. The Zoning Map of the Town of Mount Airy is hereby amended to remove the SHA Right of Way from the Town Zoning Map, and to extend and zone as Residential Existing (RE) the balance of the Vosloh Property and the Fleming Property not depicted in the Town Zoning Map due to the erroneous depiction of the SHA Right of Way.

Section 2. Town Staff is hereby authorized and directed to amend the Town Zoning Map accordingly, and to submit the Town Zoning Map, as amended herein, to applicable State and County agencies.

Section 3. Except as modified by the amendment contained in Section 1 above, the existing land use classifications shown and depicted on the existing Zoning Map for the Town of Mount Airy shall remain in full force and effect.

Section 4. Pursuant to Section C2-13B, upon the vote of at least 4 members of the Town Council, the requirement contained in that Section that an ordinance not be enacted in the same Town Council meeting in which it is introduced is hereby suspended, and this ordinance shall become effective immediately as an emergency ordinance upon the approval of this ordinance by the Mayor, or if applicable, immediately after being passed over the Mayor's veto by the Town Council, the matter having already been the subject of a public hearing before the Town Council, and review and recommendation by the Town Planning Commission.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that
this Ordinance shall take effect on the 2nd day of March, 2020.

Introduced this _____ day of _____, 2020.

Enacted this _____ day of _____, 2020 by a vote of _____ in favor and
_____ opposed.

ATTEST:

Jason Poirier, Secretary

Larry Hushour, President of the Town Council

Approved this _____ day of _____, 2020.

ATTEST:

Jason Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.
This _____ day of _____, 2020.

Thomas V. McCarron, Town Attorney

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